

ESTTA Tracking number: **ESTTA103113**

Filing date: **10/06/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91161373
Party	Plaintiff American Italian Pasta Company American Italian Pasta Company ,
Correspondence Address	THOMAS H. VAN HOOZER HOVEY WILLIAMS LLP 2405 GRAND BLVD. SUITE 400 KANSAS, MO 64108  clb@hoveywilliams.com
Submission	Opposition/Response to Motion
Filer's Name	Cheryl L. Burbach
Filer's e-mail	cburbach@hoveywilliams.com, tvh@hoveywilliams.com, litigation@hoveywilliams.com
Signature	/Cheryl L. Burbach/
Date	10/06/2006
Attachments	Opposition to Motion to Extend Deadlines.pdf ( 4 pages )(107271 bytes )

AMERICAN ITALIAN PASTA  
COMPANY

V.

Applicant.

MARK: BARILLA - AMERICA'S  
FAVORITE PASTA

A motion to extend deadlines must set forth with particularity the facts that substantiated good cause for the requested extension. T.B.M.P. § 509.1(a). Mere conclusory allegations lacking in factual detail are not sufficient. *Luemme*, 53 USPQ2d at 1761 (sparse motion contained insufficient facts on which to find good cause); *Johnston Pump/General Valve, Inc. v. Chromalloy American Corp.*, 13 USPQ2d 1719, 1720 n.3 (TTAB 1989) (“The presentation of one’s arguments and authority should be presented thoroughly in the motion or the opposition brief thereto.”).

Applicant's basis for its extension request is thin. The Motion neither alleged any "good cause" for its request or contained any legal authority in support of its request. Rather, Applicant's Motion in a **single sentence** states:

This request is not being filed for purposes of delay, but to allow Barilla additional time to confer with its' [sic] foreign client as well as that clients' [sic] U.S. representative on the pending discovery requests.

The board should rejected such conclusory allegations as being sufficient to establish good cause. *See Luemme*, 53 USPQ2d at 1761(denying the petitioner's motion to extend because it failed to provide detailed information concerning the reason for needing the extension).

Regardless, no good cause to extend the deadlines exists here. There is no evidence in the record to show that Applicant has been diligent during the discovery period. In seeking AIPC's consent to Applicant's latest extension request, Applicant's counsel merely explained that he was having a difficult time getting his client, located in Italy, to provide responses. No further explanation was provided. This is not excusable neglect.

From a review of the U.S. Patent and Trademark Office Records, it appears that Applicant's counsel has represented Applicant for nearly 20 years in prosecuting trademark applications. And, in light of the experience Applicant's counsel has had in dealing with this proceeding for over **two years**, Applicant and its counsel should have anticipated any potential delays in receiving its client's responses and planned accordingly. Applicant had 35 days (30 days from service and five days for mailing) to make appropriate arrangements and provide timely responses. Therefore, no excusable neglect can be found here.

Further, Applicant should have filed its request much sooner than 30 days after service of the discovery requests. Discovery periods are not considered extended unless and until the Board has approved the extension:

Responses to interrogatories, requests for production of documents and things, and requests for admission must be served within 30 days from the date of service of such discovery requests. The time to respond may be extended upon stipulation of the parties, or upon motion granted by the Board, or by order of the Board. The resetting of a party's time to respond to an outstanding request for discovery will not result in the automatic rescheduling of the discovery and/or testimony periods; such dates will be rescheduled only upon stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board.

37 C.F.R. § 2.20(a).

The record in this proceeding is replete with Applicant's delay tactics. Applicant has filed no less than **nine** requests to extend deadlines, **eight** of which have requested extension of the discovery period. Applicant has consistently stalled the progress of the proceeding, which is both harassing and prejudicial to American Italian Pasta Company ("AIPC").

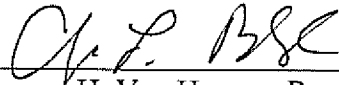
AIPC fully anticipates that Applicant, in its Reply Brief, will introduce new explanations as to why its delay is excusable. As such, AIPC respectfully pleads that the Board disregard any new explanation by Applicant since AIPC will not have an opportunity to address them. Applicant certainly knew that AIPC opposed its latest extension request, as Applicant stated in its Motion. Thus, it should have included any and all material arguments to substantiate the required good cause.

In light of Applicant's incessant, bad faith delay tactics, AIPC respectfully requests that the Board issue an Order denying Applicant's request to reset the testimony periods, finding that Applicant has waived any objections to AIPC's third set of discovery requests and compelling Applicant's complete discovery responses.

Respectfully submitted,

AMERICAN ITALIAN PASTA COMPANY

By its attorneys,



Thomas H. Van Hoozer, Reg. No. 32,761

Cheryl L. Burbach

HOVEY WILLIAMS LLP

2405 Grand Boulevard, Suite 400

Kansas City, Missouri 64108

816/474-9050

Attorneys for Opposer

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of October, 2006, I electronically filed the above and served same by causing a true copy thereof to be sent via first class, postage paid, to the following:

G. Franklin Rothwell

Brian Banner

ROTHWELL, FIGG, ERNST & MANBECK P.C.

1425 K Street, NW, Suite 800

Washington, DC 20005

